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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Elizabeth Mainz,

10 Plaintiff,

11 v.

12 State Farm Mutual Automobile Insurance
13 Company,

14 Defendant.

No. CV-23-01021-PHX-DWL

ORDER

15 The Court has an independent obligation to determine whether it has subject-matter
16 jurisdiction. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999). Pursuant to
17 Rule 12(h)(3) of the Federal Rules of Civil Procedure, “[i]f the court determines at any
18 time that it lacks subject-matter jurisdiction, the court must dismiss the action.”

19 Defendant removed this action solely on the basis of diversity jurisdiction. (Doc. 1
20 ¶ 6.) The party seeking to invoke diversity jurisdiction has the burden of
21 proof, *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986), by a preponderance of the
22 evidence. *McNatt v. Allied-Signal, Inc.*, 972 F.2d 1340 (9th Cir. 1992); *see* 13B Federal
23 Practice § 3611 at 521 & n. 34. There is a strong presumption against removal
24 jurisdiction. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (“Federal jurisdiction
25 must be rejected if there is any doubt as to the right of removal in the first instance.”).

26 Diversity jurisdiction exists when there is complete diversity of citizenship between
27 the plaintiffs and the defendants and the amount in controversy exceeds \$75,000, exclusive
28 of interests and costs. 28 U.S.C. § 1332. A controversy meets this requirement when “all

1 the persons on one side of it are citizens of different states from all the persons on the other
2 side.” *Strawbridge v. Curtiss*, 7 U.S. 267 (1806). Having reviewed the Notice of Removal
3 to determine if subject matter jurisdiction exists, the Court finds that
4 the Notice of Removal is facially deficient because it fails to affirmatively set forth the
5 facts necessary to determine Plaintiff’s citizenship.

6 The Notice of Removal states that Plaintiff “is a resident” of Arizona. (Doc. 1 ¶ 5.)
7 But “[i]t has long been settled that residence and citizenship [are] wholly different things
8 within the meaning of the Constitution and the laws defining and regulating the jurisdiction
9 of the . . . courts of the United States; and that a mere averment of residence in a particular
10 state is not an averment of citizenship in that state for the purpose of jurisdiction.”
11 *Steigleder v. McQuesten*, 198 U.S. 141, 143 (1905). “To be a citizen of a state, a natural
12 person must first be a citizen of the United States. The natural person’s state citizenship is
13 then determined by her state of domicile, not her state of residence. A person’s domicile
14 is her *permanent* home, where she resides with the intention to remain or to which she
15 intends to return.” *Kanter v. Warner–Lambert Co.*, 265 F.3d 853, 858-59 (9th Cir. 2001)
16 (emphasis added) (citations omitted). *See also id.* (“In this case, neither Plaintiffs’
17 complaint nor [Defendants’] notice of removal made any allegation regarding Plaintiffs’
18 state citizenship. Since the party asserting diversity jurisdiction bears the burden of proof,
19 [Defendants’] failure to specify Plaintiffs’ state citizenship was fatal to Defendants’
20 assertion of diversity jurisdiction.”). Thus, an allegation regarding a party’s state of
21 residence fails to establish his or her state of domicile for diversity purposes.

22 To cure this pleading deficiency, the Court will require Defendant to file an
23 amended notice of removal that affirmatively states Plaintiff’s citizenship under the
24 correct legal standard. *Star Ins. Co. v. West*, 2010 WL 3715155, *2 (D. Ariz. 2010); *see*
25 *also NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 612 (9th Cir. 2016) (“Courts may
26 permit parties to amend defective allegations of jurisdiction at any stage in the
27 proceedings.”). Defendant is advised that failure to timely comply with this order shall
28 result in the remand of this action without further notice for lack of subject matter

1 jurisdiction.

2 To ensure that the requirements of subject-matter jurisdiction are met, the Court will
3 require Plaintiff to file a notice informing the Court of her state of domicile.

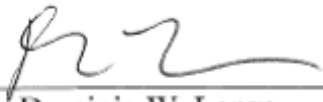
4 Accordingly,

5 **IT IS ORDERED** that Plaintiff shall file a notice informing the Court of her state
6 of domicile by **June 16, 2023**.

7 **IT IS FURTHER ORDERED** that Defendant shall file an amended notice of
8 removal properly stating a jurisdictional basis for this action no later than **June 23, 2023**.

9 **IT IS FURTHER ORDERED** that if Defendant fails to file an amended notice of
10 removal by **June 23, 2023**, the Clerk of Court shall remand this action to state court without
11 further notice.

12 Dated this 9th day of June, 2023.

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17 Dominic W. Lanza
18 United States District Judge
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